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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CITY OF BREA et al.,	
Plaintiffs and Respondents,	G045069
v.	(Super. Ct. No. 30-2011-00444494)
CLOUD 9, INC.,	O P I N I O N
Defendant and Appellant.	

Appeal from an order of the Superior Court of Orange County, David R. Chaffee, Judge. Dismissed as moot.

Donna Bader; Anthony L. Curiale and John J. Murphy III, for Defendant and Appellant.

James L. Markman, City Attorney; Richards, Watson & Gershon, T. Peter Pierce, Norman A. Dupont and Andrew J. Brady, for Plaintiff and Respondent.

* * *

Cloud 9, Inc., a medical marijuana dispensary (the dispensary), appeals from the trial court's order granting a motion by the City of Brea in its name and on behalf of the People (see Code Civ. Proc., § 731 [city attorney may file nuisance abatement action in People's name]) (collectively, the City) for a preliminary injunction shutting down the dispensary based on the City's total ban in its municipal code against medical marijuana dispensaries. The trial court subsequently granted the City's summary judgment motion and entered a permanent injunction, from which the dispensary has also appealed (G046638). The parties sought to consolidate the two appeals, but we requested that they submit letter briefs on whether the dispensary's challenge in *this* appeal from the preliminary injunction has been mooted by entry of the permanent injunction. The City acknowledges the present appeal is moot, and we agree that given the permanent injunction there is no reason to expend appellate resources resolving the validity of the preliminary injunction.

The dispensary's sole opposition to dismissal appears to be a concern that *if* the permanent injunction is eventually held invalid in G046638, *that* disposition would somehow "possibly leav[e] intact" the preliminary injunction despite reversal of the permanent injunction. Not so. The City obtained the preliminary injunction on the same ground it obtained the permanent injunction: the trial court's conclusions as a matter of law that (1) operation of a medical marijuana dispensary constitutes a nuisance per se under the City's ban, and (2) the municipal ban is not preempted by statewide medical marijuana law. A preliminary injunction is no more than a determination the moving party is *likely* to succeed on the merits of its claim and an interim injunction is appropriate, but if it is later determined the claim fails as a matter of law and the

permanent injunction therefore must be dissolved, there is no basis for an earlier preliminary injunction to survive based on the same invalid claim.

To the contrary, nothing remains of a preliminary injunction once a permanent injunction is entered. "It is well settled that an injunction *pendente lite* remains in force only until rendition of the final judgment in the case. When granted it is a provisional remedy that is merged in a perpetual [i.e., permanent] injunction and thereupon the injunction *pendente lite* ceases to have any force or effect." (*Peoples Ditch Co. v. Foothill Irr. Dist.* (1930) 103 Cal.App. 321, 325, original italics.) Thus, if "'a permanent injunction is granted, the temporary one is of course ended, and equally so if a permanent one is denied. [Ctiation].'" (*Ibid.*) Consequently, with this "merg[ing]" of the preliminary injunction into the permanent injunction, an "appeal from the order granting the preliminary injunction is rendered moot and may be dismissed." (6 Witkin, Cal. Procedure (5th ed. 2008) Provisional Remedies, § 402, p. 344; see also *People v. Rath Packing Co.* (1978) 85 Cal.App.3d 308, 314 ["permanent injunction . . . render[s] the appeal from the granting of the preliminary injunction moot"]; *Pacific Gas & Electric Co. v. City of Berkeley* (1976) 60 Cal.App.3d 123, 126, fn. 4 ["Since that [preliminary injunction] order was a provisional remedy which ceased to have any operational effect once the permanent injunction was granted, the appeal therefrom must be dismissed"].)

In limited circumstances, a reviewing court may exercise its discretion to retain and decide an issue that is technically moot, particularly concerning matters of substantial public interest that would otherwise evade review. (See, e.g., *Chantiles v. Lake Forest II Master Homeowners Assn.* (1995) 37 Cal.App.4th 914, 921.) But here, the dispensary has not suggested an applicable exception to the mootness doctrine, and the more developed record prepared for summary judgment and the ensuing permanent

injunction on appeal in G046638 counsel in favor of deciding the issues raised by the parties in that case, not this one.

Accordingly, the appeal in this matter is dismissed as moot.[1] The parties shall bear their own costs on this appeal.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

FYBEL, J.

[1] The parties' pending requests for judicial notice are similarly denied as moot.